

# DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548

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FILE: B-184440

DATE: January 2, 1976

MATTER OF: DeLorenzo Scrap Iron & Metal Co.

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## DIGEST:

1. Protest against award of contract for Government surplus property by Government facilities contractor requested to conduct sale by Government contracting officer comes substantially within exception criteria in Optimum Systems, Inc., 54 Comp. Gen. 767 (1975), and is type that will be considered, since contractor merely is acting as intermediary for contracting agency in obtaining bids and under terms of facilities contract and ASPR contracting agency is required to actively and directly participate in selection of purchase.
2. Protest that reasonable price for Government surplus property was not realized because sales IFB was inadequate and ambiguous was not required to be filed until after bid opening.
3. While description of furnace in sales IFB may have been lacking, because it appears from prices received from higher bidders that material inside furnace more than likely was taken into consideration in preparation of bids and that lower bidders whose prices are more truly representative of value of property without material would continue to be low by substantial amount if allowed to add amount to bids to cover current price for material, protest that IFB should be resolicited is denied, since bids should not be set aside except for cogent reasons.

By telefax of July 8, 1975, as supplemented by letter dated July 9, 1975, DeLorenzo Scrap Iron & Metal Co. (DeLorenzo) protested that all bids received under surplus sales invitation for bids (IFB) A15BAP-75-002, issued by Voss Machinery Company (Voss), should be rejected in the best interest of the Government.

The IFB was issued by Voss under a facilities contract entered into with it by the Army Armament Command in connection with a contract for the surveillance and maintenance of the Burlington Army Ammunition Plant. By letter of April 7, 1975, the contracting officer requested Voss to conduct the sale of the Government property that was surplus.

The surplus Government property consisted of various items including furnaces, ovens and washing and pickling machines. Seven bids were received on the property. DeLorenzo bid \$72,000 for the entire lot while Ace Surplus Co., Inc., (Ace), bid \$75,000.

DeLorenzo contends that, because the IFB was inadequate and ambiguous as to the property being sold, the bidders overlooked an estimated 80,000 pounds of incanel metal baskets located in one of the furnaces, which alone would have the value of \$75,000. Therefore, DeLorenzo contends the rejection of all bids and resolicitation would be in the best interest of the Government.

The Army has responded that the DeLorenzo protest should not be considered because it is a protest against the award of a subcontract by a prime contractor and does not come within the exceptions to the consideration of such protests set forth in Optimum Systems, Inc., 54 Comp. Gen. 767 (1975), 75-1 CPD 166. Further, it is stated that the protest is untimely because it is based upon an inadequate and ambiguous IFB and was not filed until after the bid opening. In the event the protest is considered on the merits, it is recommended that it be denied on the grounds that DeLorenzo knew or should have known of the incanel metal in the furnace at the time it bid, that the amount is a quarter of that stated by DeLorenzo and that the price that would be bid on resolicitation would be speculative.

The facilities contract with Voss incorporated by reference the "Disposition of the Facilities" clause, ASPR § 7-702.26 (1974 ed.), which provides for the contracting officer giving notice to the contractor to dispose of the facilities by sale "at such price or prices, as may be approved by the Contracting Officer." Further, the Voss sales IFB states in article E that "The contract will be awarded to that responsible bidder whose bid conforming to the Invitation will be most advantageous to the Government, price and other factors considered." (Emphasis supplied.) Moreover, the April 7 letter in which the contracting officer requested Voss to conduct a sale of the Government surplus property directed that it be in compliance with ASPR XXIV. ASPR § 24-206.2(e) (1974 ed.) provides that the bids will be evaluated by the Government representative assigned the responsibility for the disposition "to establish that the sale price is fair and reasonable" and that "Award shall

be approved to that responsible bidder whose bid is most advantageous to the Government, price and other factors considered." (Emphasis supplied.)

The contract awarded by Voss is strictly speaking not a sub-contract. Voss is merely acting as an intermediary for the contracting agency in obtaining bids on the surplus property. Under the terms of the facilities contract and the regulations, the contracting agency is required to actively and directly participate in the selection of the purchaser under the Voss IFB. In the circumstances, in view of the relationship between the parties and the control the contracting agency has over the selection of the purchaser, the protest comes substantially within the exception criteria in Optimum Systems and is the type we will consider.

As to the untimeliness of the protest, section 20.2(b)(1) of the Bid Protest Procedures (40 Fed. Reg. 17979 (1975)), in part, provides:

"Protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening or the closing date for receipt of initial proposals shall be filed prior to bid opening or the closing date for receipt of initial proposals. \* \* \*"

However, DeLorenzo's protest is not that the IFB is per se improper. Instead, the firm contends that it discovered after submitting its bid that the IFB did not adequately describe the subject matter of the sale and, as a result, the prices received were too low. Since the protest was filed within 10 working days after bid opening we must consider it to be timely.

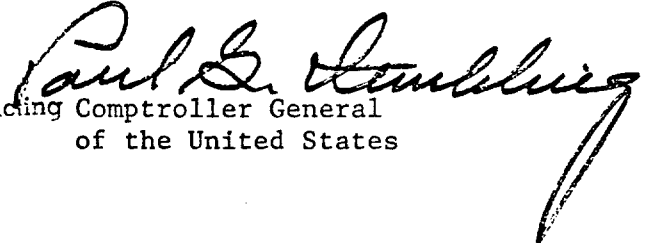
With respect to the bid prices, although the description of the property in the IFB was general in that it merely stated "furnace," an identification number, dimensions and weight, and nothing more, and DeLorenzo has contended that it did not learn of the incandescence metal in the furnace until after bid opening, the agency has reported that a DeLorenzo representative was observed inspecting the property and looking into the furnace containing

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the incanel baskets. In this respect, the IFB urged all bidders to inspect the sale items prior to submitting a bid. Further, the agency has indicated that a price of about \$75,000 is a fair and reasonable return for the sale of the property with the baskets. Therefore, while the description of the property may have been lacking, it would appear from the prices received from DeLorenzo and Ace that the incanel material more than likely was taken into consideration by them in the preparation of bids. Moreover, the lower bids of the other bidders who were responsive are so low that the contracting agency has indicated that they are more truly representative of the value of the property without the baskets. We observe that if these bidders were to add an amount to their bids to cover the current price reported by the contracting agency for the incanel metal, they would continue to be low by a substantial amount.

In the circumstances, we do not find the cogent reasons needed to justify resolicitation after bids have been exposed. See Massman Construction Co. v. United States, 102 Ct. Cl. 699, 719 (1945).

Accordingly, DeLorenzo's protest is denied.

  
Acting Comptroller General  
of the United States